IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

SUKHRAM Vs. STATE OF RAJASTHAN
(S.B.Criminal Appeal No.318/87)

Dated:- 25th July, 2006

PRESENT

REPORTABLE

HON'BLE MR.JUSTICE MOHAMMAD RARIQ

Mr.Vineet Jain, for the appellant.
Mr.Rameshwar Dave, Public Prosecutor for the State.

BY THE COURT:-

This criminal appeal has been filed by the appellant against the judgment dated 7th September,1987 passed by the Sessions Judge, Nagaur whereby he has convicted the accused as under :-

U/s 376 IPC - Sentenced to 7 years' R.I. and a fine of Rs.2000/- in default whereof to further undergo 3 months' R.I.

U/s. 326 IPC - Sentenced to 5 years' RI and a fine of Rs.1000/-, in default whereof to further undergo 2 months' R.I.

U/s. 323 IPC - Sentenced to six months' R.I. And a fine of Rs.500/-, in default whereof to further undergo one month's R.I.

All the aforementioned sentenced were ordered to run concurrently.

One Tejaram resident of Balaya submitted a written report to the S.H.O.,Police Station, Mundawa on 15.3.1986 that in the noon of that day when his daughter-in-law Mohini(wife of Bhikharam) aged 19 years and his daughter Sharda aged 15 years were returning to village after performing `Sood' from their agricultural field, they on the way met with Arjun s/o Pancha and Sukhram s/o Kana (accused-appellants), who with an intention to molest her modesty caught hold of Mohini and threw her on the ground. Sukhram threatened her with knife and stated that if she raised any cry, he would kill her. Mohini was having `kassi' with the help of which she tried to save herself. The accused Sukhram thereupon inflicted a knife blow on her person and Arjun snatched `kassi' from the hands of Sharda and both of them beat Mohini with `kassi'. Both prosecutrix Mohini and Sharda raised hue and cry and when Dhura Jat reached there to save them, the accused ran away from the place of incident.

On the basis of such written report, a regular First Information Report No.14/86 was chalked out for the offences u/ss. 354, 324 and 323 IPC and investigation commenced. On the basis of evidence, the Investigating Officer filed challan against the accused-appellant u/ss. 376, 326 and 323 IPC.

The prosecution examined as many as 19 witnesses to prove the charge against the accused. Important witnesses amongst them being P.W. 1 Mohini, who is prosecutrix, P.W. 2 Sharda and P.W. 3 Dhularam who are eye witnesses of the incident, P.W. 4 Bhikharam,

husband of the prosecutrix, P.W. 5 Teja Ram, father-in-law of the prosecutrix, P.W. 8 Dr.Hansaraj who examined the X-ray plate of the prosecutrix , P.W. 9 Dr.Suresh Kumar who prepared the injury report and rape examination report of the prosecutrix and P.W. 19 Hanuman Singh, who is Investigating Officer of the case. The prosecution has also exhibited as many as 27 documents in support of its case. Ex.P/8 is the injury report of Mohini, Ex.P/9 is the injury report of Sharda, Ex.P/10 is the rape report of Mohini, Ex.P/11 is the report of Radiologist and Ex.P/20 is the recovery memo of knife. The defence on the other side examined as many as four witnesses in support of their case. Learned trial Court after hearing arguments of the parties convicted and sentenced the accused-appellant Sukhram for the offences indicated hereinabove.

In assailing the conviction recorded by the trial Court, Mr.Vineet Jain learned counsel appearing for the accused-appellant has argued that the statements of prosecution witnesses including that of the prosecutrix suffer from infirmities, improbabilities and contradictions which have not been taken into account by the trial Court. The First Information Report was filed very late after deliberations and consultations at various level even then there was no allegation of rape therein. It is only subsequent improvement made by the prosecution during the course of investigation that the accused-appellant has been involved on charge of rape. The allegation of rape has not found any corroboration from the medical evidence. He has argued that P.W. 9 Dr.Suresh Kumar in his statement has categorically stated that on 15.3.1986 he was only asked to examine injuries of Smt. Mohini and on

that day she did not utter a single word about the rape having been committed upon her. Likewise, other prosecution witnesses in their statements recorded on 15.3.1986 did not allege that the accused-appellant committed rape on the prosecutrix. Dr.Suresh Kumar has also stated that he did not find any injury on private parts of the prosecutrix. It has been argued that inference should be drawn for non-production of the report of the Chemical Examiner. He has further argued that the conduct of the prosecution witnesses namely P.W.1 Mohini and P.W.2 Sharda was highly improbable and that they did not disclose the alleged incident of rape with Mohini to anyone in the family including the females. It thus proves that no rape was ever committed with her. Alternatively, it has been argued that in view of the incident of assault, the subsequently developed story of rape was highly improbable. P.W. 3 Dhula Ram has also not supported the version of the prosecution regarding allegation of rape. It has been argued that conviction of the accused-appellant u/s 326 IPC was wholly illegal because the prosecution has failed to establish that the alleged injury suffered by the prosecutrix was intentionally caused and was not result of an incident of scuffle.

Learned counsel has further argued that even though the incident allegedly took place on 15.3.1986, First Information Report was registered very late in the morning of the following day i.e. at 2.15 AM on 16.3.1986. It has been argued that injury reports which have been exhibited as Ex.P/8 and P/9 were prepared by the doctor on the own request of the complainant party and were not preceded by lodgment of First Information Report. Delay in lodging First Information Report thus

creates doubt about the genesis of the incident and veracity of the prosecution story.

The learned counsel has further argued that P.W. 1 Mohini who is prosecutrix does not inspire any confidence because she in her statement has categorically stated that she did not tell anyone in her family including her husband and her sister about the rape. The conduct of the prosecutrix is highly improbable and un-natural particularly when she has made tremendous improvement upon her original version in the First Information Report. There were no teeth bite on her body and even no scratch on her private parts in spite of the allegation of vigorous and violent resistance by her which again makes the prosecution story highly improbable. The vaginal swab and smear have been taken on 27th August after the incident which has occurred on 16.3.1986 during which period she had all the opportunity to have sex with her husband and further fact that the vaginal swab and smear were taken to form an opinion about the alleged rape which also confirms from the fact that the doctor who has examined the prosecutrix was not in a position to give a definite opinion about the rape on the basis of physical examination. It has also been argued that P.W. 3 Dhula Ram does not support the prosecution story even though he is related to prosecutrix. He does not state whether he was informed about the rape either by the prosecutrix Mohini or by her sister-in-law Sharda even though he was the first person who arrived at the place of incident. P.W. 2 Sharda has admitted in her statement that she did not inform about the alleged incident of rape to her mother and father. P.W. 4 Bhikha Ram, husband of the prosecutrix has

also stated that her wife did not inform him about the rape in spite of inquiry made by his mother.

Shri Vineet Jain learned counsel appearing for the appellant has thus argued that the judgment passed by the trial Court suffers from vigorous infirmities as aforementioned and therefore conviction of the accused-appellant for the various offences as noted above may be set aside. In support of his argument, he has cited various case law. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Devindra Singh vs. State of Himachal Pradesh, reported in AIR 2003 SC p. 3365 wherein the allegation of the prosecution was that the prosecutrix had been subjected to forcible sexual intercourse by five persons. There was however no injury on any part of her body and there was no matting of public hair with discharge and no fresh scares of tenderness on genital areas was found. The doctor in his report stated that the prosecutrix was habituated to sexual intercourse. In the facts of that case, their Lordships held that since no injury was found on her body goes to show that she did not put up any resistance and therefore acquitted the appellant.

Another judgment cited by the learned counsel was delivered in the case of of Joseph vs. State of Kerala, reported in AIR 2000 S.C. p. 1608 wherein their Lordships noted that no injuries were found on the vagina or private parts of the prosecutrix and not a single injury was found on any other part of the body of the victim who was a grown lady of about 26 years age. The facts proved that she did not put

any resistance and therefore the Hon'ble Supreme Court acquitted the appellant of charge u/s 376 IPC by giving him benefit of doubt.

Yet another judgment of the Hon'ble Supreme Court in the case of Raju vs. State of Karnataka, reported in 1994 S.C.C.(Cri.) p.538 was cited by the learned counsel for the appellant. In that case, Hon'ble Supreme Court while maintaining the conviction u/s 376 IPC reduced the sentence from 7 years' R.I. to 3 years' R.I. considering the fact that the accused was very young at the time of incident and long lapse of time during which they suffered disrepute and mental agony. Similar judgment on the reduction of quantum of sentence on the basis of mitigating circumstances was cited from the case of Pashora Singh & Anr. vs. State of Punjab, reported in Cr.L.R.(S.C.) 1992 p.790. Learned counsel has further relied upon the judgment of the Supreme Court in the case of Kailash Prasad Kanodia & Anr. vs. State of Bihar, reported in AIR 1980 S.C. p.106 in which their Lordships while taking into consideration the fact that the medical evidence of the injured did not disclose any serious injury on any vital part and doctor admitted the presence of fracture of serious nature, altered the conviction recorded u/s 326 to 324. Lastly, learned counsel has cited a judgment of the Hon'ble Supreme Court in the case of Lakshmana Rao vs. The Public Prosecutor, State of A.P. & Anr., reported in Cr.L.R. (S.C.) 1979 p.696 wherein the Hon'ble Supreme Court held that the improvement made on the version given in the First Information Report throw serious doubt on the prosecution story and reflected adversely on the conduct of the witnesses, thus gave benefit of doubt to the accused-appellant and acquitted him.

On the other hand, Mr.Rameshwar Dave, learned Public Prosecutor appearing for the State has supported the judgment passed by the trial Court and argued that the appellant has rightly been convicted for offences u/s 323, 326 and 376 IPC. On the question of delay in lodging the FIR, it has been argued that incident in the present case took place in noon on 15.3.1986. First Information Report was lodged at 2.15 a.m. in the night intervening between 15/16.3.1986. There was thus no delay. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Parbata vs. State of Rajasthan reported in 2006(1) WLC(SC) (Criminal) page 236, in which case the learned trial Court had acquitted the accused of the offence u/s 376(2)(e) IPC and the State came in appeal before this Court. This Court vide judgment dated 28.1.2002 in S.B.Criminal Appeal No.405/93 reversed the judgment of the trial Court and held the accused guilty of charges u/s 376 IPC and sentenced the accused to undergo ten years' R.I. with a fine of Rs.1000/-. In appeal before the Supreme Court, an argument was raised that injuries on the person of the prosecutrix were self inflicted otherwise it was a case of consent intercourse. It was argued that there was discrepancy in the evidence. The Hon'ble Supreme Court while rejecting all these arguments held that the findings recorded by the trial Court was based only on conjectures and suspicion. The trial Court was not justified in not accepting the version of the prosecution witnesses which appeared to be natural having a ring of truth. Minor contradictions were blown out of preparation and were described as glaring contradictions. Two witnesses who came at the place of incident from two different directions and observed incident at different stages though in

quick succession. Their deposition was natural and consistent with the case of the prosecution and there was no reason to disbelieve them. With the help of this judgment, Shri Rameshwar Dave argued that the present case also apart from P.W. 2 Sharda, P.W. 3 Dhula Ram was also eye witness as he has substantially corroborated the commission of rape upon the prosecutrix. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of State of M.P. vs. Dayal Sahu, reported in 2005(2) WLC(SC) Criminal p.632 in which their Lordships of the Supreme Court while relying upon various previous case law on the subject held that conviction for offence u/s 376 IPC can be based on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. It was held that corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Para 12 of the said judgment is reproduced hereunder:-

> "12.A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutirx and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contraditions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the court while acquitting the accused on benefit of doubt should be

> cautions to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities."

Shri Rameshwar Dave also relied upon the judgment of the Hon'ble Supreme Court in the case of State of Punjab vs. Gurmeet Singh, reported in (1996) 2 SCC 384. Rrelevant para of the said judgment is as under :-

> "The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency of conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficult to act on the testimony of a victim of sexual assault alone to convict and accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complaints of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The course while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found

> to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the sahpe of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind a probable."

I have considered the arguments advanced by both the learned counsels and perused the record.

In the present case, alleged incident of rape with the prosecutrix had taken place in the noon of 15.3.1986. FIR has been lodged at 2.15 a.m. during the intervening night of 15/16.3.1986. The prosecutrix in her statement has deposed the manner in which she was cruely beaten and the accused over powered her. He caught hold her and threw her on the ground and when she tried to escape from his clutches, he again caught her and inflicted a knife blow on her hand which resulted in to fracture on head of meta carpel bone of index finger . When she still did not give up and her sister-in-law came to her rescue, the accused inflicted blows with `kassi' which is an apparatus used for agricultural

purposes. Helpless as she was, yet she gave the maximum amount of resistance. This is evident from her injury report Ex.P/8 which prove that she suffered as many as 13 injuries out of which 6 injuries were on the back, 3 injuries each on left and right leg whereas one each injuries were sustained on her leg, right forearm and left arm. She also suffered an injury on her left knee and two abrassions on right wrist joint and two abrassions on left forearm. There was an incised wound on her left hand plam for which the X-ray was advised. Ex.P/7 is the X-ray report which proves that there was a fracture on head of meta carpel bone of index finger. Injury No.11 was therefore opined to be grievous in nature . The examination of rape prepared by the Doctor which is exhibited as Ex.P/10 clearly show that the prosecutrix had external injuries when she was subjected to medical examination. Her vaginal swab and smears were taken for chemical analysis. Ex.P/2 which is the Analysis report show that human semen was detected in Exhibit 3 from packet marked `CD'. Ex.P/9 is the injury report of Sharda, sister-in-law of the prosecutrix,ccording to which she also received six injuries . P.W. 8 Hansraj has proved the X-ray report of the prosecutrix.

P.W. 3 Dhula Ram has also provided corroboration to the versions of the prosecutrix Mohini and Sharda. He has stated that when he was coming from the agricultural field, he saw that Sharda was sitting near the field of Purna and when she saw him, Sharda started crying. Dhula Ram has further stated that he also saw the accused-appellant Sukhram there and when he started raising hue and cry both of they ran away from the place of incident. He saw Mohini lying on the ground with

her legs upto knee uncovered. She told her that Arjun and Sukhram had beaten her and also inflicted a knife blow. In the cross-examination this witness has stated that Mohini shy from him and therefore when he asked whether these persons tried to outrage her modesty, she stated that if Dhura would not have come, accused would have killed her. Similarly, P.W. 4 Bhikha Ram who is the husband of the prosecutrix has stated that since the prosecutrix was injured, she was first taken to hospital in Nagaur on tractor. He has stated that when Sharda and his wife were coming from the agricultural field to their residence, Sharda was crying and when he asked her about the incident, she did not utter anything. Sharda told him that both the accused have beaten her and the prosecutrix Mohini mercilessly with lathies and knife.

P.W. 19 Hanuman Singh, S.H.O. in his statement has proved the recovery of various articles including the knife and broken bangles of the prosecutrix and the clothes of the accused and preparation of site plan.

On the question of delay in lodging the F.I.R., the evidence in this case clearly show that in small villages, the daughters in law and the daughters of the family maintains a respectable distance from elders in the family including their mother-in-law/mother and they could not disclose out of fear of infame because they are shocked and in a state of bebilderness.

The prosecutrix being a newly wedded and her sister-in-law

(Nanad) Sharda being of tender age were frightened so much so out of fear of infame in the society that did not immediately disclose the factum of rape. In small villages, daughters in law and daughters of the family maintains a respectable distance from elders in the family including their mothers-in-law/mothers and they could not disclose out of fear of infame because they were in a state of shock and remained in a state of bewilderness for quite sometime. Mere fact that First Information Report was initially lodged for offences u/ss. 354,323 and 324 IPC and on discovery of fact with regard to rape having been committed upon the prosecutrix during the course of investigation, offence u/s 376 IPC was subsequently added thereto could not prove fatal to the prosecution case because of the peculiar features of the present case. On a careful reading of the statement of P.W. 1 Mohini, it appears that she has remained unshaken even during the course of examination. She has candidly stated the manner in which the accused committed rape upon her. Similarly, P.W. 2 Sharda has also corroborated the incident exactly in the same way in which it has been narrated by the prosecutrix. Sharda has also stated that she did not immediately narrate the incident to her father out of shyness. The prosecutrix had sustained as many as 13 injuries which clearly prove that she offered maximum resistance . The resistance was so severe that she suffered a fracture of head of meta carpel bone of index finger as is evident from Ex.P/7. Apart from the statements of P.W. 1 Mohini and P.W. 2 Sharda, other witnesses namely, P.W. 3 Dhula who is eye witness of the incident, P.W. 4 Bhikha Ram, husband of the prosecutrix, P.W. 5 Teja Ram, father in law of the prosecutrix, P.W. 8 Hansraj, doctor who examined X-ray of the prosecutrix and P.W. 9

Dr.Suresh Kumar, author of the injury report and rape report have provided more than sufficient corroboration to the story of the prosecution.

Their Lordships of the Hon'ble Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant Shekari , reported in (2004)8 SCC 153 while considering the argument of delay of six months in lodgment of First Information Report for offence u/s 376 IPC , the observations of the Hon'ble Supreme Court as contained in para 18 of the said judgment was as under :-

> "18.The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility or embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

Somewhat similar observations were made by their Lordships of the Supreme Court in Sri Narayan Saha & Anr. vs. State of Tripura, reported in 2004(7) SCC 775 as would be evident from para 8 of the said judgment, which is extracted hereunder :-

> “8.In India if the prosecutrix happened to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false.

In yet another recent judgment in the case of State of Punjab vs. Ramdev Singh, reported in 2004(1) SCC p.421, the Hon'ble Supreme Court held that prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former, it is both physical as well as psychological and emotional.

In the present case, a detailed analysis of the evidence made above clearly show that apart from the testimony of the prosecutrix, there was over-whelming evidence which not only provides corroboration to her testimony but also independently prove the charges against the accused-appellant.

For what has been discussed above, I do not find any merit in this appeal. The same is therefore dismissed.

(MOHAMMAD RAFIQ),J.